ACTION FOR RESTITUTION UNDER A RESCINDED CONTRACT WHERE THE PLAINTIFF RETAINS A BENEFIT.—The decision of the Supreme Court of Georgia in the recent case of *Timmerman* v. *Stanley* (1905) 51 S. E. 760, is remarkable in view of earlier cases in that jurisdiction and the general law on the subject. The plaintiff purchased from the defendant a scholarship which gave him the privilege of attending the defendant's school until he should become proficient in shorthand. After he had attended for a time but before he became proficient he was expelled without reason. In an action to recover the price of the scholarship the plaintiff was allowed to recover such price without returning the value of the instruction he had received.

To allow one party to a contract to treat it as rescinded and sue for restitution when the other party is in default is an anomaly, because the aggrieved party has an adequate remedy by suing for damages for the breach. Keener, Quasi-Contracts, 306. But the doctrine is now well established in the common law. *Anonymous* (1721) 1 Str. 407; *Shaffner* v. *Killian* (1880) 7 Ill. App. 620; *Nash* v. *Towne* (1866) 5 Wall. 689, 702; *Brown* v. *Woodbury* (1903) 183 Mass. 279, and is also the rule of the civil law. Pothier, Contrat de Vente, sec. 475; Code Civil, arts. 1184, 1610, 1654. The basis of the doctrine is that it is not unjust to the defendant if, upon his default, the plaintiff consents to treat the contract as at an end and sue for restitution to his former position. If he does so, however, justice likewise demands that he return anything of value he has received from the defendant, so as to put him also in *statu quo*. *Todd et al.* v. *Leach* (1896) 100 Ga. 227; *Wilson* v. *Burks* (1883) 71 Ga. 862; *Miner* v. *Bradley* (1839) 22 Pick. 457; *Summerall* v. *Graham* (1879) 62 Ga. 729. If the parties cannot be put in *statu quo*, the plaintiff may not treat the contract as rescinded, but must sue for damages for the breach. Georgia Code, sec. 3712; *Hunt* v. *Silk* (1804) 5 East 449; *Reed* v. *Blandford* (1828) 2 Y. & J. 278. In *Wilson* v. *Burks*, supra, the plaintiff, suing for a return of the purchase money of furniture bought from the defendant and retaken by him, was compelled to return the rental value of the furniture before the retaking. In *Todd et al.* v. *Leach*, supra, the plaintiff had built a house on the defendant's land in exchange for the latter's promise that the plaintiff should occupy the premises for life free of rent. In a suit, after eviction, for the value of materials furnished, the plaintiff was compelled to return the rental value of the premises during the occupancy. If the plaintiff must return the value of the benefit received in the form of use aud occupancy, it would seem that he must and could return the value of the benefit received in the form of instruction. A jury can estimate the value of services rendered by a plaintiff; it would seem that it could estimate the value of the defendant's instruction in the principal case. That impossibility of a return in specie should excuse the plaintiff from returning its value, is a violation of the fundamental principle of quasi-contracts, namely, the unjust enrichment of one party at the expense of the other.